Origin

1909-10

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FILE No. 32 OF 1909-10.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

GENERAL AND REVENUE SECRETARIAT.

JUDICIAL AND LEGISLATIVE (LEGISLATION.)

AUGUST 1912.

"A" Collection. Serial Nos. 1—6.

Amendment of the Indian Contract Act, IX of 1872, as in force in Mysore.

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1909-10.

GENERAL AND REVENUE SECRETARIAT.

(LEGISLATION.)

NOTES.

File No. 32.

Amendment of the Indian Contract Act, IX of 1872, as in force in Mysore.

Subject No. 23.
The Indian Contract Act (IX of 1872.)
Mr. S. R. Balakrishna Rao, Shimoga Municipality.

Summary of discussion.—The amendments introduced into the Indian Contract Act (IX of 1872) by Act No. VI of 1899 may be adopted into the Mysore Regulation (Sections 16, 19A and 74).

Reply of Government.—Noted.

Submitted for orders with an extract from notes made before the discussion of the subject before the Assembly.

2. This representation may be favourably considered. Section 16 refers to the definition of "undue influence." The amendment was introduced so as to make the scope of that section wider. Section 19A is more or less consequential to Section 16.

3. Section 74 gives increased power to Civil Courts to relieve debtors from the strict letter of their bond wherever the stipulation to pay damages for the breach of the contract is of a penal nature.

T. K. S.
30-3-10.

S. N.
31-3-10.

4. The impression left on the mind after the discussion in the assembly is that there is no urgent necessity for this amendment.

S. HIRIYANNIAH.
31-3-10.

5. My recollection is to the contrary effect. The file may be submitted to 2nd Councillor for instructions as to whether a draft bill may be drawn up.

C. S. BALASUNDARAM IYER.
Secretary.
8-4-10

Submitted to 2nd Councillor.

S. N.
9-4-10.

I think that these small improvements may well be adopted here also. Please put up the objects and reasons and the discussions that took place when introducing the alteration in the supreme Legislative Council. Make a draft, showing the alterations clearly and submit to the Dewan as to whether it may be introduced into the Legislative Council.

H. V. NANJUNDAYYA.
12-4-10.

7. The amendments will be harmless, perhaps even beneficial, alterations in our law of contract. The speech of Mr. Chalmers at the introduction of the bill explains the object and nature of the amendments. If approved, further action will be taken.

8. Submitted to Dewan as directed by the 2nd Councillor.

S. HIRIYANNIAH.
30-4-10.

9. It is desirable to adopt the amendments and assimilate the Mysore law with that o British India.

10. I 2nd Councillor will agree, the subject may be brought up at the next meeting of Legislative Council, which will probably come off before the Dasara Representative Assembly meeting.

T. ANANDA ROW.
Dewan.
16-8-1.

The amendment may be adopted.

K. P. PUTTANNA CHETTY,
1st Councillor.
4-6-07.

12 Submitted for orders.

T. K. S.
22-8-10.

S. N
22-8-10.

13. Put up the usual drafts of (1) Statement of objects and reasons and (2) D. O. to the Residency.

Also three typed and carefully verified copies of the Bill.

S. HIRIYANNIAH.
22-8-10.

14. Draft of a bill which had not been put up originally is now submitted for approval with draft statement of objects and reasons and draft. D. O. to the Residency.

T. K. S.
16-1-11.

S. N.
17-1-11.

15. (1) Please have the drafts typed.

(2) The interpretation clause may remain as in the British Indian Act.

(3) The typed copy of the bill will have to be carefully compared again with the British Indian Acts of 1891 and 1899. Please obtain a couple of spare copies of each of them and place a copy of each in the file.

S. HIRIYANNIAH.
14-2-11.

16. Typed copies of the D. O., draft bill and statement of objects and reasons are submitted. Copies of Act, XII of 1891, are available and a spare copy is put up. Spare copies of Act, VI of 1899, are not available. Draft to Messrs. Cambray & Company is submitted for approval.

T. K. S.
18-2-11.

S. N.

17. Submitted to 2nd Councillor in the first instance.

S. HIRIYANNIAH.
21-2-11.

18. I have altered the statement of objects and reasons a little, to make it more accurate.

19. The drafts may be approved.

H. V. NANJUNDAYYA.
17-3-11.

Submitted to His Highness.

20. The accompanying draft bill to amend the Indian Contract Act, 1872, as in force in Mysore, is intended to assimilate the law in force in Mysore to the law in British India, where the Contract Act was amended by Act No. VI of 1899. The desirability of introducing the amendments into Mysore also was urged at the Representative Assembly of 1909. The principal amendments are (1) a fuller definition of the term "undue influence" and (2) the addition of a provision giving power to the Court to set aside contracts induced by undue influence.

21. The draft bill and statement of objects and reasons, and the draft letter to the Legislative Council intimating the intention to place the bill before the Legislative Council may be approved.

T. ANANDA ROW.
20-5-11.

Order.

22. Approved.

K. R. W.,
His Highness the Maharaja of Mysore.
24-3-11.

D. O. No. 2086, dated the 26th March 1911, to the Hon'ble Colonel Hugh Daly, C.S.I., C.I.E., Resident in Mysore, Bangalore,

Forwards a copy of a draft bill to further amend the Indian Contract Act with a statement of object and reasons and informs that it is proposed to place it before the Legislative Council in due course.

D. O. No. 2310, dated 19th April 1911, from the First Assistant Resident in Mysore, Bangalore.

States that there is no *prima facie* objection to the bill being laid before the Legislative Council as proposed.

Submitted.

T. K. S.
21-4-11.

S. N.
21-4-11.

23. It is too late to include this in the agenda for the meeting of the 27th instant.

24. The bill may therefore be published in the gazette under rule 32. We will thereby be advancing it by one stage.

S. HIRIYANNIAH.
21-4-11.

25. This may be done. It is not a measure likely to be opposed in any quarter.

H. V. NANJUNDAYYA.
21-4-11.

26. I agree.

T. ANANDA ROW.
29-5-11.

27. Put up draft.

S. HIRIYANNIAH.
1-6-11.

28. Draft submitted.

T. K. S,
2-6-11.

29. Issue.

S. HIRIYANNIAH.
5-6-11.

30. The bill was published in the gazette under Rule 32 of the Legislative Council Rules and introduced into the Council at the meeting held on the 11th September, when it was considered and adopted by the Council with a slight alteration in sub-clause (4) of clause 1. The sanction of the Government of India has now to be obtained to enable the Council to finally pass the Bill and for promulgating it as law. Submitted with a draft to the Residency for approval

T. K. S.
28-10-11.

S. N.
28-10-11.

31. May be approved.

S. HIRIYANNIAH.
28-10-11.

32. Draft approved by 2nd Councillor.

33. Draft approved by Dewan. 4th November 1911.

34. Issue.

C. S. BALASUNDARAM IYER.
6-11-11.

3. *No. Pol. 417, dated 9th November 1911, to the First Assistant Resident in Mysore.*

Forwards two copies of the bill, as finally adopted by the Legislative Council, for obtaining the sanction of the Government of India for its being passed into law.

4. No. 323, dated 17th January 1912, from the First Assistant Resident.

Informs that the Governor-General in Council has accorded his assent to the bill on the usual understanding as to retention by him of the power and authority vested in him by virtue of Article 19 of the Instrument of Transfer.

35. Submitted.

S. N.
19-1-12.

36. Submitted to 2nd Councillor and Dewan for information.

S. HIRIYANNIAH.
19-1-12.

37. Seen.

H. V. NANJUNDAYYA.
21-1-12.

38. The bill was finally passed by the Council at the meeting held on the 21st February 1912. The sanction of His Highness the Maharaja has now to be obtained for its promulgation as law. Submitted as usual with a copy for the Dewan's signature.

S. HIRIYANNIAH.
26-2-12.

C. S. BALASUNDARAM IYER.
28-2-07.

Submitted to His Highness.

39. The bill to amend the Indian Contract Act of 1872, as in force in Mysore, was finally passed by the Legislative Council on the 21st February 1912. His Highness' assent may be accorded for its promulgation as law.

T. ANANDA ROW.
5-13-12.

40. *Order.*

K. R. W.,
His Highness the Maharaja of Mysore.
7-3-12.

41. Put up draft order.

(Dewan's signature has to be obtained).

S. HIRIYANNIAH.
12-3-12.

42. Submitted with a draft to the Compiler for approval.

T. K. S.
12-3-12.

S. N.
12-3-12.

43. Issue.

S. HIRIYANNIAH.
12-3-12.

44. Before the order was issued, an accidental omission was discovered, *viz.*, the omission of the date from which the bill is to come into force. Please see Section 1 (3). I am sorry neither the office nor myself detected the omission though as always usual the bill was again revised before the agenda for the meeting was drafted. The omission may be rectified under rule 53 of the Legislative Council rules, though Section 5 of the General Clauses Regulation provides for such cases. Action under rule 53 was taken in the case of the Tank Panchayat Regulation where a different date than that agreed to by the Legislative Council was inserted. I beg again to express my regret for the omission.

S. HIRIYANNIAH.
14-3-12.

45. I am sorry that the matter of inserting the date was lost sight of. The matter is not of much practical importance as there is a provision in the General Clauses Regulation. But I think it best to insert '1st April 1912' in the Gazette publication.

There is no substantial change of law and the matter will cause hardship to nobody and no long notice is required.

H. V. NANJUNDAYYA.
14-3-12.

46. I agree.

T. ANANDA ROW.
20-3-12.

47. Issue.

C. S. BALASUNDARAM IYER.
23-3-12.

5. No. 2807, dated the 25th March 1912, to the Compiler, Mysore Gazette.

Orders the publication of the bill which received the assent of His Highness the Maharaja on the 7th March 1912 as Regulation, IV of 1912.

48. Submitted for information.

T. K. S.
8-4-12.

S. N.

49. Seen.

S. HIRIYANNIAH.
11-4-12.

50. Submitted.

Spare copies of the Regulation have been received and compared. Copies have to be sent to the Residency as usual. A draft to the Residency is herewith put up.

T. K. S.
16-4-12

S. N.
17-4-12.

51. Issue.

S. HIRIYANNIAH.
25-4-12.

6 To the First Assistant Resident in Mysore, No. Pol. 910, dated 30th April 1912.

Forwards the usual copies of the Regulation.

Amendment of the Indian Contract Act, IX of 1872, as in force in Mysore.

FILE No. 32 OF 1909-10. **Serial No. I.**

D. O. No. 2086, dated Bangalore, 27th March 1911, from Mr. T. Ananda Row, B.A., C.I.E., to the Hon'ble Col. Hugh Daly, C. S. I., Resident in Mysore.

"I beg to enclose herewith a copy of a bill to further amend the Indian Contract Act as in force in the State together with a statement of objects and reasons. The bill assimilates the law on the subject of contract in the State with that obtaining in British India. It is proposed to place it before the Legislative Council in due course."

A BILL FURTHER TO AMEND THE INDIAN CONTRACT ACT AS IN FORCE IN MYSORE.

Whereas it is expedient further to amend the Indian Contract Act as in force in Mysore His Highness the Maharaja is pleased to enact as follows:—

Short title, extent, commencement and application.

1. (1) This Regulation may be called the "Indian Contract Act Amendment Regulation, 19 "

(2) It shall extend to the whole of Mysore.

(3) It shall come into force on

(4) It shall apply to every contract in respect of which any suit is instituted or which is put in issue in any suit after the commencement of this Regulation.

Substitution of a new section for Section 16 of the Indian Contract Act, 1872.

2 Section 16 of the Indian Contract Act, 1872, shall be repealed and the following substituted therefor, namely:—

"Undue influence" defined.

"16 (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another

(*a*) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(*b*) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another enters into a contract with him, and the transaction appears, on the face of it, or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of Section 111 of the Indian Evidence Act, 1872, as applied to Mysore.

Illustrations.

(*a*) A having advanced money to his son, B, during his minority, upon B's coming of age obtains by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(*b*) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(*c*) A being in debt to B, the moneylender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(*d*) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

Amendment of Section 19 and addition of a new section after that section.

3. In Section 19 of the said Act, the words "undue influence" shall be repealed and after the same section, the following new section shall be inserted, namely:—

Power to set aside contract induced by undue influence.

"19 A. When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(*a*) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(*b*) A, a moneylender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.

Amendment of Sub-section (1) of Section 25 of the Indian Contract Act, 1872.

4. The word "documents" shall be substituted for the word "assurances" occurring in Sub-section (1) of Section 25 of the said Act.

Amendment of para 1 of Section 43 of the Indian Contract Act, 1872.

5. The words "one or more" shall be substituted for the word "one" in para 1 of Section 43 of the said Act.

Amendment of illustration (*e*) to section 63 of the Indian Contract Act, 1873.

6. The word "composition" shall be substituted for the word "compensation" occurring in the illustration (*e*) to Section 63 of the said Act.

Amendment of Section 74 of the Indian Contract Act, 1873.

7. (1) Paragraph 1 of Section 74 of the said Act shall be repealed and the following substituted therefor, namely:—

Compensation for breach of contract where penalty stipulated for.

"74. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation:—A stipulation for increased interest from the date of default may be a stipulation by way of penalty."

(2) The following illustrations shall be added after illustration (*c*) to the said section, namely:—

(*d*) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent from the date of default. This is a stipulation by way of penalty and B is only entitled to recover from A such compensation as the Court considers reasonable.

(*e*) A, who owes money to B, a moneylender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.

(*f*) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(*g*) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.

STATEMENT OF OBJECTS AND REASONS.

The law on the subject of contract in force in the State is the British Indian Act, IX of 1872, with theamendments made by the Indian Contract Act Amendment Act, IV of 1886. The Act has since been amended in British India by Acts, XII of 1891 and VI of 1899. It has now been considered desirable to introduce these amendments into the Act as in force in the

State also and thus assimilate the law on the subject with that in British India. The members of the Representative Assembly have also desired that action might be taken in this direction very early. Hence the present Bill. The notes on the clauses explain the changes which are intended to be introduced into the Act by the bill.

Notes on clauses.

1. *Clause 2*—The definition of "undue influence" contained in Section 16 of the existing Act is not comprehensive enough and is merely an enumeration of two common classes of cases of undue influence. It is now proposed to state the law of undue influence in the form of the general principles on which it has been determined by courts of equity.

2. *Clause 3.*—Where a contract has been obtained through undue influence, the existing Act simply makes it voidable at the option of the party who gave such a consent. It is now proposed to gave a wider discretion to the Courts in dealing with such cases. The new Section 19A accordingly gives power to them to relieve the party who acted under such influence, even thongh he may have received some benefit under the contract, subject to the condition that the Court may impose such terms upon the party seeking relief, as to it may seem just.

3. *Clause 7.*—This amplifies the scope of the existing Section 74 so as to make it applicable in terms to all stipulations by way of penalty, whether the penalty consists of a sum named in the contract or not, and is intended to relive the debtors to some extent from payment of exorbitant interest. The members of the Representative Assembly in 1909 prayed that Civil Courts may be empowered to relieve the debtors in cases where parties have contracted to pay usurious rates of interest. The section as now amended is deemed sufficient to enable the Courts to give parties all reasonable relief.

Clause 1 (4) is intended to make the provisions of the Bill applicable to pleas of unconcionables bargain set up by the defendants in all suits after the commencement of the Regulation whether the bargain was made before or after the commencement of the Regulation.

The chnages proposed to be intoduced by clauses 4, 5 and 6 are of a purely verbal character and call for no explanation.

D. O. No. 2310, dated Bangalore 19th April 1911, from Mr. P. B. Warburton, First Assistant Resident in Mysore, to T. Ananda Row, Esq., C.I.E., Dewan of Mysore.

"I am desired to acknowledge the receipt of your D. O. letter No. 2086, dated the 27th March—5th April 1911, forwarding a copy of a bill to further amend the Indian Contract Act as in force in the Mysore State, and in reply, to state that there is no *prima facie* objection to the bill being laid before the Legislative Council as proposed." **Serial No. 2.**

NOTIFICATION.

No. 32—L. C. dated 10th June 1912.

Under Rule 32 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill further to amend the Indian Contract Act as in force in Mysore is published for general information with a statement of objects and reasons. **Serial No. 3.**

A Bill further to amend the Indiun Contract Act as in force in Mysore.

Whether it is expedient further to amend the Indian Contract Act as in force in Mysore; His Highness the Maharaja is pleased to enact as follows:—

Short title, extent commencement, and application.

1. (1) This Regulation may be called "The Indian Contract Act Amendment Regulation, 19.

(2) It shall extend to the whole of Mysore.

(3) It shall come into force on.....

(4) It shall apply to every contract in respect of which any suit is instituted or which is put in issue in any suit after the commencement of this Regulation.

Substitution of a new section for Section 16 of the Indian Contract Act, 1872.

2. Section 16 of the Indian Contract Act, 1872, shall be repealed and the following substituted therefor, namely:—

"16. (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

"Undue influence" defined.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(*a*) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(*b*) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of Section 111 of the Indian Evidence Act, 1872, as applied to Mysore.

Illustrations.

(*a*) A, having advanced money to his son B, during his minority, upon B's coming of age obtains by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(*b*) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(*c*) A being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(*d*) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence."

Amendment of Section 19 and addition of a new section after that section.

3. In Section 19 of the said Act, the words "undue influence" shall be repealed and, after the same section, the following new section shall be inserted, namely:—

Power to set aside contract induced by undue influence.

"19. A. When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(*a*) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(*b*) A, a moneylender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just."

Amendment of Sub-Section (1) of Section 25 of the Indian Contract Act, 1872.

4. The word "documents" shall be substituted for the word "assurances" occurring in sub-section (1) of Section 25 of the said Act.

Amendment of the Indian Contract Act, IX of 1872, as in force in Mysore.

Amendment of para 1 of Section 43 of the Indian Contract Act, 1872.

5. The words "one or more" shall be substituted for the word "one" in para 1 of Section 43 of the said Act.

Amendment of illustration (*e*) to Section 63 of the Indian Contract Act, 1872.

6. The word "composition" shall be substituted for the word "compensation" occurring in the illustration (*e*) to Section 63 of the said Act.

Amendment of Section 74 of Indian Contract Act, 1872.

7. (1) Paragraph 1 of Section 74 of the said Act shall be repealed and the following substituted therefor, namely:—

"74. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Compensation for breach of contract where penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty."

(2) The following illustrations shall be added after illustration (*c*) to the said section, namely:—

"(*d*) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent from the date of default. This is a stipulation by way of penalty and B is only entitled to recover from A such compensation as the Court considers reasonable.

(*e*) A, who owes money to B, a moneylender, undertakes to repay him by delivering to him ten maunds of grain on a certain date and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver twenty maunds. This is a stipulation by way of penalty and B is only entitled to reasonable compensation in case of breach.

(*f*) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(*g*) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty."

STATEMENT OF OBJECTS AND REASONS.

The law on the subject of contract in force in the State is the British Indian Act, IX of 1872, with the amendments made by the Indian Contract Act Amendment Act, IV of 1886. The Act has since been amended in British India by Acts XII of 1891 and VI of 1899. It has now been considered desirable to introduce these amendments into the Act as in force in the State also, and thus assimilate the law on the subject with that in British India. The members of the Representative Assembly have also desired that action might be taken in this direction very early. Hence the present Bill. The notes on the clauses explain the changes which are intended to be introduced into the Act by the Bill.

Notes and clauses.

1. *Clause 2.*—The definition of "undue influence" contained in Section 16 of the existing Act is not comprehensive enough and is merely an enumeration of two common classes of cases of undue influence. It is now proposed to state the law of undue influence in the form of the general principles on which it has been determined by Courts of equity.

2. *Clause 3.*—Where a contract has been obtained through undue influence, the existing Act simply makes it voidable at the option of the party who gave such a consent. It is now proposed to give a wider discretion to the Courts in dealing with such cases. The new Section 19 A accordingly gives power to them to relieve the party who acted under such influence even though he may have received some benefit under the contract, subject to the condition that the Court may impose such terms upon the party seeking relief, as to it may seem just.

3 *Clause 7.*—This amplifies the scope of the existing Section 74 so as to make it applicable in terms to all stipulations by way of penalty, whether the penalty consists of a sum named in the contract or not, and is intended to relieve the debtors to some extent from payment of exorbitant interest. The members of the Representative Assembly in 1909 prayed that Civil Courts may be empowered to relieve the debtors in cases where parties have contracted to pay usurious rates of interest. The section as now amended is deemed sufficient to enable the Courts to give parties all reasonable relief.

Clause 1 (4) is intended to make the provisions of the Bill applicable to pleas of unconscionable bargain set up by defendants in all suits after the commencement of the Regulation whether the bargain was made before or after the commencement of the Regulation.

The changes proposed to be introduced by clauses 4, 5 and 6 are of a purely verbal character and call for no explanation.

Serial No. 3.

Letter Pol. No. 417, dated the 9th November 1911, from the Secretary to Government, General and Revenue Departments, to the First Assistant Resident in Mysore, Bangalore.

I am directed to forward herewith a bill further to amend the Indian Contract Act as in force in Mysore and to state as follows:—

The law on the subject of contract in force in the State is the British Indian Act, IX of 1872, with the changes introduced into it by the Indian Contract Act Amendment Act, IV of 1886. The Act has since been amended in British India by Acts, XII of 1891, and VI of 1899. Th latter Act has introduced many important changes in the law, such as those relating to undue influence and stipulations by way of penalty. It has now been considered desirable to introduce these changes into the Act as in force in the State and thus assimilate the law on the subject with that in British India. The members of the Mysore Representative Assembly have also desired that action might be taken in this direction. A Bill was accordingly framed and placed before the Legislative Council at the meeting held on the 11th September 1911, when it was considered and adopted by that body with an alteration in sub-clause (4) of clause 1. As the sub-clause at present stands in the British Indian Act, it might mean (owing to the absence of the word "instituted" after the word 'suit' where it occurs a second time) that the new provisions regarding undue influence could be pleaded even if the suit was instituted *before* the commencement of the Act. While the Allahabad High Court has placed this construction on the words of the sub-clause, the Madras High Court has taken a contrary view and would apply the provisions only to suits *instituted* after the commencement of the Regulation. The Durbar consider that the latter view is the one contemplated by the Legislature and have accordingly approved of the insertion of the word "instituted" after the word 'suit' where it appears a second time in the sub-clause in question. In other respects the bill follows closely the provisions of the British Indian Act.

I am now to request that the sanction of the Government of India may be obtained for the bill as thus amended being passed as law.

A Bill further to amend the Indian Contract Act as in force in Mysore.

Whereas it is expedient further to amend the Indian Contract Act as in force in Mysore; His Highness the Maharaja is pleased to enact as follows:—

Short title, extent, commencement, and application.

(1) This Regulation may be called "The Indian Contract Act Amendment Regulation, 19 ."

(2) It shall extend to the whole of Mysore.

(3) It shall come into force on

(4) It shall apply to every contract in respect of which any suit is instituted or which is put in issue in any suit instituted after the commencement of this Regulation.

Substitution of a new section for Section 16 of the Indian Contract Act, 1872.

2. Section 16 of the Indian Contract Act, 1872, shall be repealed and the following substituted therefor, namely:—

"16. (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

"Undue influence" defined.

(2) In particular and without prejudice) to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another— .

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(*b*) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of Section 111 of the Indian Evidence Act, 1872, as applied to Mysore.

Illustrations.

(*a*) A, having advanced money to his son B, during his minority, upon B's coming of age obtains by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(*b*) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(*c*) A being in debt to B, the moneylender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(*d*) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence."

Amendment of Section 19 and addition of a new section after that section.

3. In Section 19 of the said Act, the words "undue influence" shall be repealed and after the same section, the following new section shall be inserted, namely :—

Power to set aside contract induced by undue influence.

"19 A. When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(*a*) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(*b*) A, a moneylender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just."

Amendment of Sub-Section (1) of Section 25 of the Indian Contract Act, 1872.

4. The word "documents" shall be substituted for the word "assurances" occurring in Sub-Section (1) of Section 25 of the said Act.

Amendment of para 1 of Section 43 of the Indian Contract Act, 1872.

5. The words "one or more" shall be subsituted for the word "one" in para 1 of Section 43 of the said Act.

Amendment of illustration (*c*) to Section 63 of the Indian Contract Act, 1872.

6. The word "composition" shall be substituted for the word "compensation" occurring in the illustration (*e*) to Section 63 of the said Act.

Amendment of Section 74 of Indian Contract Act, 1872.

7. (1) Paragraph 1 of Section 74 of the said Act shall be repealed and the following substituted therefor, namely :—

"74. When a contract has been broken, if a sum is named in the contact as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the

Compensation for breach of contract where penalty stipulated for.

contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty."

(2) The following illustrations shall be added after illustration (*c*) to the said section, namely :—

"(*d*) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent from the date of default. This is a stipulation by way of penalty and B is only entitled to recover from A such compensation as the Court considers reasonable.

(*e*) A, who owes money to B, a moneylender, undertakes to repay him by delivering to him ten maunds of grain on a certain date and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver twenty maunds. This is a stipulation by way of penalty and B is only entitled to reasonable compensation in case of breach.

(*f*) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(*g*) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable to five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty."

Serial No. 4.

Letter No. 323, dated 17th January 1912, from P. B. Warburton, Esq., I. C. S., First Assistant to the Resident in Mysore, to the Dewan of Mysore.

I am directed to acknowledge the receipt of Mr. Balasundaram Iyer's letter No. 417, Pol., dated the 9th November 1911, forwarding for the orders of the Government of India a draft bill which the Durbar propose to enact to amend the Indian Contract Act, 1872 (IX of 1872), as in force in the Mysore State.

2. In reply, I am to state that the Governor-General in Council has been pleased to accord his consent to the draft bill on the understanding that he retains over it the power and authority which vests in him by virtue of Article 19 of the Instrument of Transfer.

Order No. J. 2807—Legis. 32-09-9, dated 25th March 1912.

That the accompanying bill further to amend the Indian Contract Act as in force in Mysore which received the assent of His Highness the Maharaja on the 7th March 1912, be published for general information as Regulation No. IV of 1912.

REGULATION No. IV OF 1912.

(RECEIVED THE ASSENT OF HIS HIGHNESS THE MAHARAJA ON THE 7TH DAY OF MARCH 1912.)

A Regulation further to amend the Indian Contract Act as in force in Mysore.

Whereas it is expedient further to amend the Indian Contract Act as in force in Mysore; His Highness the Maharaja is pleased to enact as follows :—

Short title, extent, commencement, and application.

1. (1) This Regulation may be called "The Indian Contract Act Amendment Regulation, 1912."

(2) It shall extend to the whole of Mysore.

(3) It shall come into force on the 1st day of April 1912.

(4) It shall apply to every contract in respect of which any suit is instituted or which is put in issue in any suit instituted after the commencement of this Regulation.

Amendment of the Indian Contract Act, IX of 1872, as in force in Mysore.

Substitution of a new section for Section 16 of the Indian Contract Act, 1872.

2. Section 16 of the Indian Contract Act, 1872, shall be repealed and the following substituted therefor, namely :—

"16 (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

"Undue influence" defined.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(*a*) Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(*b*) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of Section III of the Indian Evidence Act, 1872, as applied to Mysore.

Illustrations.

(*a*) A, having advanced money to his son B, during his minority, upon B's coming of age obtains by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(*b*) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(*c*) A being in debt to B, the money lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(*d*) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence."

Amendment of Section 19 and addition of a new section after that section.

3. In Section 19 of the said Act, the words "undue influence" shall be repealed and after the same section, the following new section shall be inserted, namely :—

Power to set aside contract induced by undue influence.

"19 A. When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(*a*) A's son has forged B's name to a promissory note. B, under thereat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(*b*) A, a money lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just."

Amendment of Sub-Section (1) of Section 25 of the Indian Contract Act, 1872.

4. The word "documents" shall be substituted for the word "assurances" occurring in Sub-Section (1) of Section 25 of the said Act.

Amendment of para 1 of Section 43 of the Indian Contract Act, 1872.

5. The words "one or more" shall be substituted for the word "one" in para 1 of Section 43 of the said Act.

Amendment of illustration (*e*) to Section 63 of the Indian Contract Act, 1872.

6. The word "composition" shall be substituted for the word "compensation" occurring in the illustration (*e*) to Section 63 of the said Act.

Amendment of the Indian Contract Act, IX of 1872, as in force in Mysore.

Amendment of Section 74 of Indian Contract Act, 1872.

7. (1) Paragraph 1 of Section 74 of the said Act shall be repealed and the following substituted therefor, namely :—

"74. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Compensation for breach of contract where penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

(2) The following illustrations shall be added after illustration (*c*) to the said section, namely :—

"(*d*) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent from the date of default. This a stipulation by way of penalty and B is only entitled to recover from A such compensation as the Court considers reasonable.

(*e*) A, who owes money to B, a money-lender, undertakes to repay him by delivering to him ten maunds of grain on a certain date and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver twenty maunds. This is a stipulation by way of penalty and B is only entitled to reasonable compensation in case of breach.

(*f*) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(*g*) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is stipulation by way of penalty."

Letter Pol. No. 910, dated the 30th April 1912, from the Secretary to Government, General and Revenue Departments to the First Assistant Resident in Mysore and Bangalore.

Serial No. VI.

I am directed to forward herewith a copy of Regulation IV of 1912, a Regulation further to amend the Indian Contract Act as in force in Mysore, with nine spare copies, and to request that a copy may, as usual be forwarded to His Highness the Nizam's Government.